

1 HONORABLE JAMES L. ROBART
2
3
4
5
6

7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 PACIFIC SURVEY GROUP, LLC
11 a Washington Limited Liability Company,

12 Plaintiff,

13 v.

14 TYCHE HIGH SEAS CAPITAL CORP., a
15 Florida Corporation; *in personam* CERTAIN
16 DATA COLLECTED DURING CHARTER
17 PARTY; *in rem*,

18 Defendants.

19 TYCHE HIGH SEAS CAPITAL CORP., a
20 Florida Corporation, *in personam*,

21 Counter-Claimant,

22 v.

23 PACIFIC SURVEY GROUP, LLC,
24 a Washington Limited Liability Company,

25 Counter-Defendant.

26 IN ADMIRALTY

27 Case No: 2:21-cv-01712-JLR-MLP

**JOINT MOTION FOR ENTRY OF
STIPULATED PROTECTIVE ORDER
AND PROPOSED ORDER**

**NOTE ON MOTION CALENDAR:
October 12, 2022**

28 COME NOW all above-named parties and jointly move pursuant to LR 7(d)(1) for entry
29 of the proposed Stipulated Protective Order attached as Exhibit A and incorporated by reference.
30 The parties certify they met and conferred and agree that this proposed Stipulated Protective Order
31 is consistent with LR 26(c). It does not confer blanket protection on all disclosures or responses to

32 JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 1
33 CASE NO. 2:21-cv-01712-JLR-MLP

34 LANE POWELL PC
35 1420 FIFTH AVENUE, SUITE 4200
36 P.O. BOX 91302
37 SEATTLE, WASHINGTON 98111-9402
38 206.223.7000 FAX: 206.223.7107

1 discovery; and the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable legal principles.
3 The Parties therefore request that the proposed Stipulated Protective Order be entered. A Proposed
4 Order is attached below for the Court's consideration.

5 So Stipulated and Agreed on this the 12th Day of October, 2022.

6 LANE POWELL PC

7 KENNEDYS CMK LLP

8 By: /s/ Katie Smith Matison

9 Katie Smith Matison, WSBA No. 20737
10 1420 Fifth Avenue, Suite 4200
P.O. Box 91302
11 Seattle, WA 98111-9402
Telephone: 206-223-7000
matisonk@lanepowell.com

12
13 Attorneys for Defendant/Counter-Claimant
14 Tyche High Seas Capital Corp.

15 By: /s/ Forrest Booth

16 Jonathan W. Thames, WSBA No.
31060
Forrest Booth (Cal SB No. 74166)
Pro Hac Vice
Anna Gourgiotopoulou (Cal SB No.
304998)
Pro Hac Vice
101 California Street, Suite 1225
San Francisco, CA 94111
Telephone: 415-323-4460
jonathan.thames@kennedyslaw.com
forrest.booth@kennedyslaw.com
anna.gourgio@kennedyslaw.com

17 Attorneys for Defendant/Counter-Claimant
18 Tyche High Seas Capital Corp.

19 BAUER MOYNIHAN & JOHNSON LLP

20 By: /s/ Donald K. McLean

21 Donald K. McLean, WSBA No.
22 2101 Fourth Avenue, Suite 2400
Seattle, Washington 98121-2320
Telephone: (206) 443-3400
23 E-mail: dkmclean@bmjlaw.com
Attorneys for Plaintiff/Counter-Defendant
24 Pacific Survey Group, LLC.

25
26
27 JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 2
CASE NO. 2:21-cv-01712-JLR-MLP

133765.0001/9149488.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1 **[PROPOSED] ORDER**

2 THE COURT GRANTS the Stipulated Motion and APPROVES the entry of the
3 Stipulated Protective Order.

4 DATED this 19th Day of October, 2022.

5 

6 MICHELLE L. PETERSON
7 United States Magistrate Judge

8
9 LANE POWELL PC

10 KENNEDYS CMK LLP

11 By: /s/ Katie Smith Matison
12 Katie Smith Matison, WSBA No. 20737
13 1420 Fifth Avenue, Suite 4200
14 P.O. Box 91302
Seattle, WA 98111-9402
Telephone: 206-223-7000
matisonk@lanepowell.com

15 By: /s/ Forrest Booth
16 Jonathan W. Thamess, WSBA No.
31060
17 Forrest Booth (Cal SB No. 74166)
Pro Hac Vice
Anna Gourgiotopoulou (Cal SB No.
304998)
Pro Hac Vice
101 California Street, Suite 1225
18 San Francisco, CA 94111
Telephone: 415-323-4460
jonathan.thamess@kennedyslaw.com
forrest.booth@kennedyslaw.com
anna.gourgio@kennedyslaw.com

19 Attorneys for Defendant/Counter-Claimant
Tyche High Seas Capital Corp.

20 Attorneys for Defendant/Counter-Claimant
Tyche High Seas Capital Corp.

21 BAUER MOYNIHAN & JOHNSON LLP

22 By: /s/ Donald K. McLean
23 Donald K. McLean, WSBA No.
24 2101 Fourth Avenue, Suite 2400
25 Seattle, Washington 98121-2320
Telephone: (206) 443-3400
E-mail: dkmclean@bmjlaw.com
26 Attorneys for Plaintiff/Counter-Defendant
Pacific Survey Group, LLC.

27 JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 3
CASE NO. 2:21-cv-01712-JLR-MLP

133765.0001/9149488.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 4
CASE NO. 2:21-cv-01712-JLR-MLP

133765.0001/9149488.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1
2
3
4
5
6
7 **EXHIBIT A**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 5
CASE NO. 2:21-cv-01712-JLR-MLP

133765.0001/9149488.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1 HONORABLE JAMES L. ROBART
2
3
4
5
6

7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 PACIFIC SURVEY GROUP, LLC
11 a Washington Limited Liability Company,

12 Plaintiff,

13 TYCHE HIGH SEAS CAPITAL CORP., a
14 Florida Corporation; *in personam* CERTAIN
15 DATA COLLECTED DURING CHARTER
16 PARTY; *in rem*,

17 Defendants.

18 TYCHE HIGH SEAS CAPITAL CORP., a
19 Florida Corporation, *in personam*,

20 Counter-Claimant,

21 v.

22 PACIFIC SURVEY GROUP, LLC,
23 a Washington Limited Liability Company,

Counter-Defendant.

IN ADMIRALTY

Case No: 2:21-cv-01712-JLR-MLP

STIPULATED PROTECTIVE ORDER

24 Counsel for Plaintiff/Counter-Defendant and Defendant/ Counter-Claimant Agree and
25 Stipulate to the Protective Order as follows:

26 **1. PURPOSES AND LIMITATIONS**

27 Discovery is currently proceeding in the instant case which will likely require production

JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 6
CASE NO. 2:21-cv-01712-JLR-MLP

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1 of documents that may contain and are likely to involve production of confidential, proprietary,
 2 trade secret and/or private information for which special protection may be warranted.
 3 Accordingly, the parties hereby stipulate to and petition this court in Washington to enter the
 4 following Stipulated Protective Order (the “Protective Order”), which is consistent with Western
 5 District of Washington LCR 26(c). It does not confer blanket protection on all disclosures or
 6 responses to discovery; the protection it affords from disclosure and use extends only to the limited
 7 information or items that are entitled to confidential treatment under the applicable legal principles
 8 and orders of each of the courts, and it does not presumptively entitle parties to file confidential
 9 information under seal, except to the extent that the court has already ruled otherwise. It likewise
 10 does not constitute agreement that any documents and/or information will be produced or disclosed
 11 by any party, and it does not signify that any documents and/or information is/are required to be
 12 produced, are admissible, and/or are relevant to the issues before either of the captioned courts or
 13 in any other action or proceeding.

14 This Protective Order shall apply to all confidential, proprietary, trade secret and/or private
 15 information so designated by any party to, or any person or entity with an interest in, either of the
 16 above-captioned lawsuits, regardless of whether any such information may have been previously
 17 disclosed, published or disseminated.

18 Defendant/ Counter-Claimant Tyche is currently a party to a separate lawsuit pending in
 19 the United States District Court for the District of Alaska captioned THE CARGO OF THE SS
 20 ISLANDER *in rem*, TYCHE HIGH SEAS CAPITAL CORP., Contract Salvor, Case No. 3:96-cv-
 21 0270-HRH (“AK Action”). Plaintiff/ Counter-Defendant Pacific filed a motion to intervene in the
 22 AK Action. The Court in the AK Action ordered Tyche and intervenor Pacific to prepare a Non-
 23 Disclosure Agreement before Pacific may access Tyche’s sealed June 2022 status report. (Dkt.
 24 349). In the AK Action, Tyche and Pacific will submit a Non-Disclosure Agreement to the Alaska
 25 District Court that complies with District of Alaska Local Civil Rule 26.1 to protect the proprietary
 26 and confidential data. The Parties agree that all sealed documents in the AK Action shall also be
 27 deemed subject to this Protective Order in this Washington case and accessible only to the extent

1 permitted by the Alaska District Court.

2 As used herein, the following terms shall have the following meanings:

- 3 • “Plaintiff” refers to Pacific Survey Group, LLC, and any related and/or affiliated
4 companies.
- 5 • “Pacific” refers to Pacific Survey Group, LLC, and any related and/or affiliated
6 companies.
- 7 • “Defendant” refers to Tyche High Seas Capital Corp.
- 8 • “Tyche” refers to Tyche High Seas Capital Corp.
- 9 • “RSA” refers to the RSA Insurance Group Limited, including its subsidiary The Marine
10 Insurance Company Limited, and any other related and/or affiliated companies.
- 11 • “OceanMar” refers to OceanMar, Inc.”, and any related and/or affiliated companies.
- 12 • “WA action” refers to case no. C20-1043-JLR-MLP, entitled PACIFIC SURVEY
13 GROUP, LLC, Plaintiff, v. TYCHE HIGH SEAS CAPITAL CORP., et al., Defendants,
14 pending in the United States District Court for the Western District of Washington at
15 Seattle.
- 16 • “AK action” refers to case no. 3:96-cv-0270-HRH, now entitled THE CARGO OF THE
17 SS ISLANDER, in rem, TYCHE HIGH SEAS CAPITAL CORP., Contract Salvor,
18 pending in the United States District Court for the District of Alaska.
- 19 • “Ship” and “vessel” refers to the SS ISLANDER, a passenger and cargo vessel which
20 sank in or near Stephens Passage, Alaska on or about August 15, 1901.
- 21 • “Agreements” refers without restriction or limitation to contracts, subcontracts, letter
22 agreements, side letters, undertakings, insurance policies and indemnities of all kinds.
- 23 • “Communications” refers without restriction or limitation to any manner of written
24 communication, including but not limited to emails, voicemails, letters, facsimiles, text
25 messages, PowerPoints, and electronic messages on social media.
- 26 • “Charter party” refers to the November 13, 2019 BIMCO Charter Party at issue in this
27 action, identified in the Complaint in the WA action (Dkt. 1).

- 1 • “Data” refers to the survey data at issue in the WA action, as identified in the Complaint
2 therein (Dkt. 1).
- 3 • “Cargo” refers to the goods, chattels, property, gold, personal effects, tools, equipment,
4 and any and all other tangible material and items which were carried on or about the SS
5 ISLANDER at the time the vessel sank, on or about August 15, 1901.

6 **2. “CONFIDENTIAL” MATERIAL**

7 “Confidential” material shall include the following documents, files, records and tangible
8 things produced or otherwise exchanged:

- 9 • Agreements between Tyche and its agents and representatives, on the one hand, and the
10 RSA and its agents and representatives, on the other hand.
- 11 • Communications between Tyche and its agents and representatives, on the one hand, and
12 the RSA and its agents and representatives, on the other hand.
- 13 • Communications between Tyche and its agents and representatives, on the one hand, and
14 the State of Alaska and its agents and representatives, on the other hand.
- 15 • Agreements between Tyche and its agents and representatives, on the one hand, and the
16 State of Alaska and its agents and representatives, on the other hand.
- 17 • Agreements between Tyche and its agents and representatives, on the one hand, and
18 archeologists and their agents and representatives, on the other hand.
- 19 • Communications between Tyche and its agents and representatives, on the one hand, and
20 archeologists and their agents and representatives, on the other hand.
- 21 • Agreements between Tyche and its agents and representatives, on the one hand, and
22 consultants and their agents and representatives, on the other hand.
- 23 • Communications between Tyche and its agents and representatives, on the one hand, and
24 consultants and their agents and representatives, on the other hand.
- 25 • Agreements between Tyche and its agents and representatives, on the one hand, and
26 experts and their agents and representatives, on the other hand.

- Correspondence between Tyche and its agents and representatives, on the one hand, and experts and their agents and representatives, on the other hand.
- Agreements between Tyche and its agents and representatives, on the one hand, and its investors and their agents and representatives, on the other hand.
- Correspondence between Tyche and its agents and representatives, on the one hand, and its investors and their agents and representatives, on the other hand.
- Agreements between Tyche and its agents and representatives, on the one hand, and its contractors and their agents and representatives, on the other hand.
- Correspondence between Tyche and its agents and representatives, on the one hand, and its contractors and their agents and representatives, on the other hand.
- Surveys of areas at or near the site of the sinking of the SS ISLANDER.
- Data collected during or related to surveys by any person or entity of areas at or near the site of the sinking of the SS ISLANDER.
- Latitude and longitude information collected during or related to surveys by any person or entity of areas at or near the site of the sinking of the SS ISLANDER.
- Target information collected during or related to surveys of areas at or near the site of the sinking of the SS ISLANDER.
- Photographs taken during or related to surveys and/or survey work by any person or entity of areas at or near the site of the sinking of the SS ISLANDER.
- Bottom profiles taken and/or created during or related to surveys and/or survey work by any person or entity of areas at or near the site of the sinking of the SS ISLANDER.
- Sonar scans taken and/or created during or related to surveys and/or survey work by any person or entity of areas at or near the site of the sinking of the SS ISLANDER.
- Assays of any materials recovered from areas at or near the site of the sinking of the SS ISLANDER.
- Analyses of any materials recovered from areas at or near the site of the sinking of the SS ISLANDER.

- 1 • Plans and/or drawings of the SS ISLANDER.
- 2 • Cargo of the SS ISLANDER.
- 3 • Load and/or stow plans for the SS ISLANDER.
- 4 • Witness statements.
- 5 • Permits and licenses issued by any government agency or entity.
- 6 • Reports submitted to any court.
- 7 • Reports submitted to any government agency or entity.
- 8 • Tax returns filed by any entity.
- 9 • Marketing materials prepared by any entity.
- 10 • Presentations prepared by any entity.
- 11 • Financial records of any entity and/or person.
- 12 • Payment records of any entity and/or person.
- 13 • Invoices sent or received by any entity or person which pertain or relate in any way to the
14 SS ISLANDER and/or efforts to recover the cargo of the SS ISLANDER.

15 3. **SCOPE**

16 The protections conferred by this agreement cover not only confidential material (as
17 defined above), but also (1) any information copied or extracted from confidential material; (2) all
18 copies, excerpts, summaries, and/or compilations of confidential material; and (3) any testimony,
19 conversations, or presentations by parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover information that is in
21 the public domain¹ or becomes part of the public domain through trial or otherwise. In the event a
22 Party believes that the information designated by the other party is available in the public domain,
23 it shall identify the exact basis that the information is in the public domain to the other Party, but
24 shall refrain from making use of the information without attempting to resolve the issue through

25
26 ¹ *Black's Law Dictionary* (11th ed. 2019) defines Public Domain as: "The universe of inventions and creative works
27 that are not protected by intellectual-property rights and are therefore available for anyone to use without charge.
 When a copyright, trademark, patent, or trade-secret rights are lost or expires, the intellectual property they had
 protected becomes part of the public domain and can be appropriated without liability for infringement."

1 the procedures identified in Section 6. In the event it is necessary for the Parties to seek a resolution
2 by the Court, the Parties shall follow the procedure in Section 4.3 of this Agreement which
3 incorporates the procedures of W.D.WA Local Rule 5(g). The prevailing Party may seek
4 attorneys' fees from the Court.

5 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

6 **4.1 Basic Principles.** A receiving party may use confidential material that is disclosed
7 or produced by another party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
9 categories of persons and under the conditions described in this agreement. Confidential material
10 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
11 that access is limited to the persons authorized under this agreement.

12 **4.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving party may disclose
14 any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney's Eyes Only and is so
20 designated;

21 (c) experts and consultants to whom disclosure is reasonably necessary for this
22 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26 instructs the service not to disclose any confidential material to third parties and to immediately
27 return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with the applicable court rules, to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. WD WA Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of WD WA Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not swept
 2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
 8 protection do not qualify for protection, the designating party must promptly notify all other parties
 9 that it is withdrawing the mistaken designation.

10 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
 11 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
 12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 13 be clearly so designated before or when the material is disclosed or produced.

14 (a) **Information in documentary form:** (e.g., paper or electronic documents
 15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
 17 contains confidential material. If only a portion or portions of the material on a page qualifies for
 18 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making
 19 appropriate markings in the margins).

20 (b) **Testimony given in deposition or in other pretrial proceedings:** the
 21 parties and any participating non-parties must identify on the record, during the deposition or other
 22 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 23 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 24 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 25 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential
 26 information at trial, the issue should be addressed during the pre-trial conference.

27 (c) **Other tangible items:** the producing party must affix in a prominent place
 JOINT MOTION FOR STIPULATED PROTECTIVE ORDER - 14
 CASE NO. 2:21-cv-01712-JLR-MLP

LANE POWELL PC
 1420 FIFTH AVENUE, SUITE 4200
 P.O. BOX 91302
 SEATTLE, WASHINGTON 98111-9402
 206.223.7000 FAX: 206.223.7107

1 on the exterior of the container or containers in which the information or item is stored the word
 2 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
 3 the producing party, to the extent practicable, shall identify the protected portion(s).

4 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
 5 designate qualified information or items does not, standing alone, waive the designating party's
 6 right to secure protection under this agreement for such material. Upon timely correction of a
 7 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 8 in accordance with the provisions of this agreement.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 **6.1 Timing of Challenges.** Any party or non-party may challenge a designation of
 11 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 15 original designation is disclosed.

16 **6.2 Meet and Confer.** The parties must make every attempt to resolve any dispute
 17 regarding confidential designations without court involvement. Any motion regarding confidential
 18 designations or for a protective order must include a certification, in the motion or in a declaration
 19 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 20 affected parties in an effort to resolve the dispute without court action. The certification must list
 21 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 22 to-face meeting or a telephone conference.

23 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without court
 24 intervention, the designating party may file and serve a motion to retain confidentiality under WD
 25 WA Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
 26 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 27 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 2 the material in question as confidential until the court rules on the challenge.

3

4 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels
 6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
 7 must:

8

9 (a) promptly notify the designating party in writing and include a copy of the
 subpoena or court order;

10

11 (b) promptly notify in writing the party who caused the subpoena or order to
 issue in the other litigation that some or all of the material covered by the subpoena or order is
 12 subject to this agreement. Such notification shall include a copy of this agreement; and

13

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 the designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 17 material to any person or in any circumstance not authorized under this agreement, the receiving
 18 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
 19 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
 20 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
 21 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
 22 Bound" that is attached hereto as Exhibit A.

23

24 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
PROTECTED MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
 26 produced material is subject to a claim of privilege or other protection, the obligations of the
 27

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order or
3 agreement that provides for production without prior privilege review. The parties agree to the
4 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts and
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 BAUER MOYNIHAN & JOHNSON LLP
17

19 By: /s/ Donald K. McLean
20 Donald K. McLean, WSBA No.
21 2101 Fourth Avenue, Suite 2400
22 Seattle, Washington 98121-2320
Telephone: (206) 443-3400
23 E-mail: dkmclean@bmjlaw.com
Attorneys for Plaintiff/Counter-Defendant
Pacific Survey Group, LLC.

1 LANE POWELL PC

2
3 By: */s/ Katie Smith Matison*
4 Katie Smith Matison, WSBA No. 20737
5 1420 Fifth Avenue, Suite 4200
6 P.O. Box 91302
7 Seattle, WA 98111-9402
8 Telephone: 206-223-7000
9 matisonk@lanepowell.com

10 Attorneys for Defendant/Counter-Claimant
11 Tyche High Seas Capital Corp.

KENNEDYS CMK LLP

12 By: */s/ Forrest Booth*
13 Jonathan W. Thames, WSBA No.
14 31060
15 Forrest Booth (Cal SB No. 74166)
16 Pro Hac Vice
17 Anna Gourgiotopoulou (Cal SB No.
18 304998)
19 Pro Hac Vice
20 101 California Street, Suite 1225
21 San Francisco, CA 94111
22 Telephone: 415-323-4460
23 jonathan.thames@kennedyslaw.com
24 forrest.booth@kennedyslaw.com
25 anna.gourgio@kennedyslaw.com

26 Attorneys for Defendant/Counter-Claimant
27 Tyche High Seas Capital Corp.

ORDER

13 PURSUANT TO STIPULATION, IT IS SO ORDERED

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
15 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
16 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
17 documents, including the attorney-client privilege, attorney work-product protection, or any other
18 privilege or protection recognized by law.

19
20 DATED: October 19, 2022

21
22 
23

24 MICHELLE L. PETERSON
25 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature:

JOINT MOTION FOR STIMULATED RBC

CASE NO. 2:21-cv-01712-JLR-MLP

122765 0001/0149488 1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107